Filed 1/28/16 C.L. v. Superior Court CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

C.L., Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CONTRA COSTA COUNTY CHILDREN & FAMILY SERVICES BUREAU, Real Party in Interest.	A146673 (Contra Costa County Super. Ct. No. J15-00670)

Petitioner C.L. (Mother), mother of 21-month-old C.L.[1], challenges the juvenile court's order bypassing reunification services and setting a permanency hearing under Welfare and Institutions Code, section 366.26[2] (366.26 hearing). She contends: (1) there was insufficient evidence to support the order bypassing services; and (2) the court erred in failing to take into account her documented mental illness. We reject her contentions and deny the petition.

[1]The petitioner and the minor share the same last initials. We will refer to the petitioner as Mother and to the minor by his initials, C.L.

[2]All statutory references are to the Welfare and Institutions Code unless otherwise noted.

FACTUAL AND PROCEDURAL BACKGROUND

On June 16, 2015, the Contra Costa County Children and Family Services Bureau (Bureau) filed a dependency petition alleging that Mother was arrested on a warrant on February 10, 2015, and had made "limited" arrangements for C.L.'s care. The petition further alleged that Mother had a chronic poly-substance abuse problem that endangered C.L.

The Bureau's June 17, 2015 detention/jurisdiction report stated that Mother was with a friend, Richard, at the time of her arrest. She gave C.L. to Richard and asked him to contact several people to see if one of them could care for C.L. during her incarceration. She wanted her friend, Safi, with whom she had previously lived, to care for C.L., but Safi, who had thrown Mother and C.L. out of her house due to Mother's drug problems, said she "wanted nothing to do with [her]." Mother's father (the maternal grandfather) also declined to take care of C.L., saying he wanted nothing to do with his daughter, was in a relationship, and did not have anybody who could care for C.L. Richard's mother, R.S., visited Mother in jail and agreed to keep C.L. Mother agreed to grant temporary guardianship of C.L. to R.S., but later changed her mind and challenged the guardianship in probate court. The probate court terminated the temporary guardianship, but the Bureau intervened to allow C.L. to remain in R.S.'s care, and filed the dependency petition on C.L.'s behalf. According to R.S., C.L. had a bad diaper rash and a respiratory infection and ear infection when he first came into her care. R.S. took C.L. to the doctor and learned he had not received any immunizations. Mother had "self induced paranoia and schizophrenia due to the meth," and was homeless. After being released from jail, Mother got into an argument with R.S.'s son and hit the son's car.

The detention/jurisdiction report stated that Mother has three older children, all of whom live with their father, L.F. L.F. told the Bureau that in either 2010 or 2011, Mother was involuntarily admitted to Napa State Hospital, where she was treated for three to six months. He reported that she was supposed to be taking medication for bipolar disorder and that she had used crystal methamphetamine "on and off" for the last 15 years. L.F.'s girlfriend, Y.C., said she tried to help Mother and support her when she

wanted to see her children. According to Y.C., Mother functioned well from March through June 2014, when she was participating in a structured program, Love-A-Child, but resisted working the steps required by the program, and abandoned it. Mother told Y.C. that she was using drugs and prostituting herself, and that C.L.'s father was homeless. Mother failed to appear for the contested detention hearing on June 18, 2015, and the juvenile court ordered that C.L. be detained.

On July 28, 2015, the Bureau requested that the juvenile court take judicial notice of two prior juvenile dependency files—those of I.F. and E.F., two of Mother's other children. I.F.'s file indicated that a dependency petition had been filed on his behalf on September 7, 2007. As to Mother, the petition alleged there were "serious and chronic substance abuse problem[s] which significantly impair[ed] [Mother's] ability to provide appropriate care" to I.F. She was arrested for child endangerment and domestic violence after repeatedly driving her car into a fence at L.F.'s house as I.F. sat in a car seat two feet from her. She had been discharged from a shelter at which she was staying due to a positive test for THC and methamphetamine.

Mother was offered family maintenance services—and later, reunification services—and agreed to stay away from I.F.'s father and enter an inpatient substance abuse program. Just one month later, she decided she no longer wanted to participate in residential treatment and left the program. During the course of I.F.'s dependency case, Mother admitted she regularly used methamphetamine and marijuana and said she was four months pregnant and had received no prenatal care.

A November 5, 2007 disposition report in I.F.'s case stated that Mother suffered a "very difficult upbringing, including a very arduous relationship with her mother, sexual molest[ation] by some of her mother's boyfriends, and criminal activity." As to substance abuse issues, Mother reported that "she has used a little bit of everything" and "was the type of person who, if it was in front of her, she would use it." According to another report filed in I.F.'s case, Mother was dishonest with the social worker about whether she was taking her prescribed psychotropic medication. Her psychiatrist questioned whether Mother's "accurate diagnosis was antisocial [personality], rather than

bi-polar disorder, which had been the presumed diagnosis." The psychiatrist believed that Mother "lacks empathy for her children in that she is not telling the truth to authorities, which indicates a lack of sensitivity to her children." Mother had attended five psychotherapy sessions and two sessions in an anger management program and was seen as "making progress in her therapy program."

After the birth of her second child, E.F., Mother continued to struggle with substance abuse and domestic violence issues. These issues came to the Bureau's attention due to both parents continuing to "engage in volatile, abusive behaviors in front of their children." As of August 2008, when E.F. was six months old, Mother was having unsupervised contact with I.F. and had initiated several episodes of domestic violence with L.F. in E.F.'s presence. She continued to use methamphetamine and had not satisfactorily completed treatment.

A dependency petition filed on behalf of E.F. alleged as to Mother that her "serious and chronic substance abuse" and her hitting or attacking her partner and others prevented her from being an adequate caregiver for E.F. It also alleged she had exhibited "minimal to no engagement in services provided and ordered" in I.F.'s case An October 23, 2008 disposition report in E.G.'s case discussed Mother's history of "suicidality" and low self-esteem. Mother believed she was bipolar and used Paxil to treat her depression and anxiety. Her psychiatrist had prescribed lithium, which Mother was not taking due to her financial situation.

I.F.'s case was dismissed in August 2009, and E.F.'s case was dismissed approximately two months later. The juvenile court granted L.F. sole physical custody of I.F. and E.F. The court awarded Mother joint legal custody of the children but terminated reunification services to her and ordered her not to live in the same home in which the children lived.

In C.L.'s case, Mother pleaded no contest to the amended allegations on July 29, 2015, and the juvenile court declared C.L. to be a dependent of the court and scheduled a dispositional hearing. The Bureau filed a dispositional report recommending that Mother be bypassed for family reunification services. The report indicated that

Mother had been convicted of six crimes between 2007 and 2013: (1) domestic battery (misdemeanor); (2) two violations of court orders to prevent domestic violence (misdemeanors); (3) two burglaries (felonies); and (4) domestic battery (misdemeanor). Mother was uncooperative in discussing her social history and the social worker had a difficult time working with her regarding services and referrals. Mother had "a significant chronic substance abuse problem, compounded by self-reported mental health issues which have rendered her incapable [of] providing consistent care and security for her child." She had had ongoing problems of instability, homelessness, and criminality. She had lost custody of her older children and had not taken appropriate steps to address her issues. She had placed the older children in danger during a visit, and L.F. was "changing the custody order to terminate her visitation." She reportedly harassed L.F. and the older children, and the oldest child was very frustrated with Mother and said he did not want to see her.

The dispositional report further noted that Mother had not been consistently visiting C.L. She was late to or did not show up for visits even after confirming. She canceled some visits immediately before the visit was to take place and missed a visit even after the visitation supervisor made special arrangements to accommodate Mother's schedule. She had visited C.L. only three times since he had been detained.

At a contested dispositional hearing on September 28, 2015, the Bureau introduced evidence that Mother had participated in a substance abuse program from 2008 to 2009. During that time, she missed two drug tests, which the court deemed to be positive tests, but had subsequent negative tests. Mother stated during her older children's dependency cases that if the children were returned to their father she would stop attending the substance abuse program.

The documentary evidence also substantiated Mother's past drug treatment failures. In each of earlier reunification plans with I.F. and E.F. she had been ordered to participate in substance abuse counseling and drug testing, but had been terminated from or failed to complete three drug treatment programs at La Casa Ujima, Ujima East, and

New Connections. There was nothing in the record indicating she had ever successfully completed a substance abuse program.

Evidence was also introduced at the hearing that Mother did not regularly visit C.L. Between her release from custody in April 2015 and the October 14, 2015 hearing, she visited him only two or three times. There was also evidence that during that period she cancelled, failed to confirm, or simply did not show up for at least eight visits.

After reviewing the evidence, the juvenile court stated: "And it is rather tragic, but mother has made absolutely no progress along the way, starting with her two older children and now where she finds herself today. It's clear that mother has had very extensive and long-standing substance abuse issues. And in the prior dependency, many issues dealing with domestic violence as well. [¶] Mother has been offered and has utilized services including drug treatment programs but has never successfully completed those programs and maintained sobriety for any period of time. And it's not as characterized that mother determined that there was a capable and fit parent so she relinquished further services, she attempted those services and simply failed to participate meaningfully and show substantial progress in those services. [¶] And most recently, it's very tragic that mother . . . has had months here before these proceedings before disposition to show the Court that she is capable and ready to make meaningful changes in her life so C.L. would not be subjected to constant in-and-out-of-the-home disruption of his life and she has failed to do that. In fact, has failed to maintain regular contact with the social worker and has even failed to show the very basic participation by showing up for visits."

"These visits really are about the relationship, Mom, between you and your child. And I know for you emotionally it may be difficult for you, but it doesn't do the child any good for you to not show up, for him to be taken to these visits and to be left without a parent bothering to take the time [to] come forward. [¶] For those reasons, I am absolutely going to follow the recommendation of the Department as I find the provisions of 361.5(b)(10) and (b)(13) apply to this case. And as it relates to C.L. I believe it is absolutely imperative that he find permanency, given the history of mother and his half

siblings. I will adopt and incorporate the recommended findings into the Court's order here today."

DISCUSSION

Substantial Evidence

Mother contends there was insufficient evidence supporting the juvenile court's order bypassing reunification services. We reject the contention.

In general, when the juvenile court removes a child from a parent's custody, it must order reunification services to assist the parent to remedy the problems that led to the removal. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 106.) However, if one of the " 'by-pass provisions' " of section 361.5, subdivision (b), is applicable, reunification services need not be provided because doing so would constitute an " 'unwise' " use of government resources. (*Ibid*.) Where a bypass provision is applicable, the court is not to order reunification services unless it finds, by clear and convincing evidence, that such services would be in the child's best interest. (§ 361.5, subd. (c).) We review an order denying reunification services for substantial evidence. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839.)

Section 361.5, subdivision (b)(10),[3] allows the juvenile court to deny the parent services if it finds the parent has not made a reasonable effort to address the problem(s) that led to the earlier removal of the child's sibling or half-sibling. Here, Mother lost physical custody of both I.F. and E.F. after she failed to engage in services and make progress in resolving the issues that led to their removal—substance abuse and domestic violence. After I.F. and E.F.'s cases were dismissed, she continued to use drugs and

[3]Section 361.5, subdivision (b)(10), provides that reunification services need not be provided to a parent when the court finds, by clear and convincing evidence, "(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent . . . failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent . . . pursuant to Section 361 and that parent . . . is the same parent . . . described in subdivision (a) and that, according to the findings of the court, this parent . . . has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent . . . ."

engage in acts of violence. She failed to complete drug rehabilitation programs, and there was no evidence she had remained drug-free for any extended period of time. She was convicted of domestic battery in March 2013 and harassed her older children and their father. She continued to have problems controlling her anger, and in April 2015, hit R.S.'s son's car as she argued with him. During C.L.'s dependency case, she was uncooperative and resistant in engaging with the social worker, failed to take advantage of services offered, and missed numerous visits with her son.

Mother complains that the sustained allegation in the petition—that she made only "limited" arrangements for C.L.'s care upon her arrest—is entirely unrelated to a showing that she failed to reunify with I.F. and E.F., or to a showing that she failed to make reasonable efforts to treat the problems that led to their removal. However, she cites no authority to support her position that any specific factor must be alleged in the petition for it to be considered a problem that led to the removal of the child. Specifically, where drug abuse is a significant factor that led to the parent's failure to reunify, it is encompassed by the phrase " 'problems that led to the removal' " even if drug abuse was not specifically enumerated in the petition. (*In re Lana S., supra,* 207 Cal.App.4th at p. 108.) As noted, drug use was in fact a significant factor in Mother's failure to reunify with I.F. and E.F. and continued to be a factor leading to C.L.'s removal. Substantial evidence supports the juvenile court's order bypassing services under section 361.5, subdivision (b)(10).

The juvenile court may also decline to offer services to a parent under section 361.5, subdivision(b)(13),[4] which offers two bases for bypassing services. First, it allows the court to bypass services to a parent who has a history of extensive, abusive,

[4] Section 361.5, subdivision (b)(13), provides that reunification services need not be provided to a parent when the court finds, by clear and convincing evidence, "(13) That the parent . . . has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

and chronic drug use and has resisted prior court-ordered treatment during the three years prior to the filing of the instant petition. Second, it allows the court to bypass services to a parent who has failed or refused to comply with an identified, available, and accessible drug treatment at least twice before.

As to the first basis, Mother does not dispute that she had a history of extensive, abusive, and chronic drug use. She argues, however, that the second prong does not apply because it requires her to have resisted treatment during the three years prior to the filing of C.L.'s petition. She asserts that because any evidence of her resisting treatment occurred during I.F. and E.F.'s dependency cases, which were dismissed in 2009, there is no evidence of her resisting treatment during the three-year period before C.L.'s petition was filed in 2015. "What SSA is required to show," however, "is that a parent has previously undergone or enrolled in substance abuse rehabilitation. Then, during the three years prior to the petition being filed, the parent evidenced behavior that demonstrated resistance to that rehabilitation. Such proof may come in the form of dropping out of programs, but it may also come in the form of resumption of regular drug use after a period of sobriety." (*Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776, 780 (*Laura B.*).) Thus, in *Laura B.*, it was proper for the juvenile court to bypass services where the mother completed substance abuse treatment *prior* to the relevant three-year-period, but continued to regularly use drugs within three years before the new petition was filed. (*Ibid.*) Similarly, in *In re William B.* (2008) 163 Cal.App.4th 1220, 1229–1230, it was proper for the court to bypass services to a father who participated in drug treatment in 2001 when his children were removed in a prior dependency, but resumed drug use in November 2006 which resulted in a new petition in March 2007.

Here, Mother participated in several drug treatment programs during I.F. and E.F.'s dependency cases, then resumed drug use within the three-year-period before C.L's petition was filed. Multiple people reported to the Bureau that Mother was using drugs. According to Y.C., for example, Mother left Love-A-Child because she did not want to do the steps. Mother's friend Safi kicked Mother and C.L. out of her home and refused to have anything to do with her due to Mother's drug problems. In March 2015,

Mother admitted that drug addiction continued to be a problem for her. She also pleaded no contest to allegations that she had a chronic poly-substance problem. Because these incidents occurred in the three-year-period before C.L.'s petition was filed, the juvenile court did not err in bypassing services under section 361.5, subdivision (b)(10).

Moreover, even if there was insufficient evidence to bypass services on the first basis, there was ample, undisputed evidence to support a finding on the second basis—that Mother failed or refused to comply with an identified, available, and accessible drug treatment at least twice before. Mother failed to complete three drug treatment programs at La Casa Ujima, Ujima East, and New Connections. She does not deny this, and raises no argument as to why these failures would not have supported bypassing services under section 361.5, subdivision (b)(13).

Mental Illness

Mother contends the juvenile court erred in failing to take into account her documented mental illness. Relying primarily on *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1792 (*Elizabeth R.*), she asserts the court should have taken into account her special needs, including the fact that she was hospitalized in a psychiatric facility with a diagnosis of bipolar disorder before C.L.'s dependency case was initiated. *Elizabeth R.*, however, is inapposite.

In *Elizabeth R.*, the mother was awarded reunification services but was hospitalized for most of the reunification period. (*Elizabeth R., supra*, 35 Cal.App.4th at p. 1787.) During the five months she was not hospitalized, she had an exemplary record of compliance with her service plan, and thereafter continued to work hard to regain custody of her children. (*Id*. at pp. 1779, 1783–1785.) The Court of Appeal reversed the juvenile court's order terminating parental rights, holding that the court had discretion to continue reunification services beyond the statutory time period to accommodate the mother's special needs. (*Id.* at p. 1798–1799.)

Here, there was no evidence that Mother was prevented from participating in her case plan due to her mental health issues. In fact, after Mother voiced her concern in an earlier dependency case that she may be bipolar, she was referred for individual

counseling. When she had difficulty paying for medication, the Bureau provided money to help her pay for her prescription. She saw a psychiatrist and attended individual therapy. Despite receiving mental health services, and having ample opportunity to participate in a reunification plan, Mother made little progress in her plan and failed to address the problems leading to the dependency. She has failed to show what, if anything, the juvenile court could or should have done to further address her special needs.

DISPOSITION

The petition for an extraordinary writ is denied. Our decision is immediately final as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

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McGuiness, P.J.

We concur:

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Pollak, J.

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Jenkins, J.

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